

**Testimony of
Steven J. Pitterle**

Mr. Chairman and Committee members, thank you for giving TDS Metrocom this opportunity to testify before you on this important policy matter. My name is Steve Pitterle and I am employed as External Relations Manager for TDS Metrocom.

TDS Metrocom, which is a subsidiary of TDS Telecom, is a competitive carrier serving approximately 100,000 Michigan lines including business and residential customers, having invested nearly 100 million dollars in Michigan to date (since about 2000) and employing approximately 150 people within Michigan.

TDS Metrocom has always been a facilities based carrier, owning its own switches and in many areas, fiber ring facilities to connect its switches to SBC in key markets including Lansing, Ann Arbor and Grand Rapids. TDS Metrocom, along with TDS Telecom, were recently rated number one for overall customer satisfaction in the North Central region which includes Michigan, by J.D. Power and Associates.

Our strong commitment in Michigan is due in large part to Michigan's pro-competitive policies to date. Although House Bill 5237 preserves many of the wholesale provisions of the current MTA, we have justifiable concerns about our ability to continue to effectively compete in Michigan based on retail pricing actions

of the large incumbent carriers such as SBC. Our primary concern is that House Bill 5237 in its current form, grants extensive retail rate freedoms to the large incumbents without protecting against predatory pricing.

Some argue that the MTA protects against predatory pricing in that providers cannot price below cost. Simply pricing retail services above cost does not prevent predatory pricing. The MTA has not prevented providers such as SBC from applying different cost models for retail versus wholesale services over identical network facilities, thus resulting in wholesale rates to competitors that are significantly higher than retail rates. Equally as important, the current MTA fails to recognize the marketplace relationship between wholesale and retail rates that is necessary to sustain meaningful competition.

The MTA sets a retail service price floor using a cost standard called TSLRIC (Total Service Long Run Incremental Cost). The PSC has utilized a different cost standard called TELRIC (Total Element Long Run Incremental Cost) when setting wholesale Unbundled Network Element (UNE) rates. Facilities-based competitors, including TDS Metrocom, are dependent on SBC for UNEs, especially the 'last mile' or local loop to complete their networks and serve Michigan consumers. This dependence on leasing the local loop from an incumbent carrier such as SBC, was understood and affirmed in the 1996 federal Telecommunications Act and a cornerstone concept of facilities-based competition; the simple notion that it is unquestionably un-economic for competitors to replicate the spider-web of last mile

connections that the incumbent built after decades as a government regulated monopoly.

There is an extremely important marketplace relationship between wholesale and retail rates in the telecommunications market due to the monopoly like status of the last mile(UNE loop) facilities of the large incumbents. There is only one (very reluctant) UNE wholesale supplier in any given Michigan market (SBC or Verizon) who is also the dominate retail market provider competing against its wholesale customers such as TDS Metrocom. UNE prices to competitors, for only portions of the network, that exceed the incumbent's overall retail rates will rapidly squeeze competition out of Michigan. A supplier's ability to charge more in a wholesale environment to its competitors(who have no economic alternatives) for the same network it uses itself in its retail offering, does not encourage investment, job creation, or competition. In fact it effectively drains the competition of its ability to survive much less invest or offer robust competition to SBC.

Today SBC offers residential customers, who would leave a competitor for SBC (called a win-back), a basic unlimited local calling package priced at \$9.39/month. We can only assume it meets the current retail price floor test.

In Lansing, SBC's current UNE loop rate charged to competitors is \$10.77/month (a rate that the PSC determined to meet the TELRIC test independent of consideration of the relationship to SBC's prospective retail rates, due to absence of predatory pricing protections in the current MTA).

This UNE loop rate is only a portion of the competitors' costs to offer a comparable service, since they must add in their own costs for the network extension back to their own switch, as well as their own switch costs. Obviously, when the initial UNE portion of the service is already priced above SBC's competing retail price, the competitor is forced into an impossible position of trying to compete on price when SBC keeps lowering its own retail rates.

The bottom line is that the same network drives both retail and wholesale costs, yet when SBC offers the service in the retail context, they price it below what they require their competitors to pay – just for the loop portion of the service.

Currently, the MTA does not contain provisions that establish a competition based relationship between wholesale and retail rates, rendering it deficient. To preserve facilities-based competition, that must change! The MTA must clearly require that an incumbent's wholesale rates be less than their overall retail rates and include a meaningful test to prevent the incumbent from charging more to a competitor for a network element than they in effect charge for that same element to themselves.

That is precisely what our proposed amendment accomplishes!

The wholesale imputation test does this without impacting retail rates. If the wholesale imputation test is not passed by the incumbent, then the incumbent's wholesale rate must be lowered accordingly to retain the proper retail/wholesale relationship. The retail rate can remain unchanged.

In summary, this Committee, the House and the entire Michigan Legislature is at a pivotal crossroads as it relates to shaping public policy that either allows telecommunications competition by competitive LECs to survive and further develop, or kill it, thereby creating deregulated local phone monopolies around the state and higher consumer prices without viable choices.

Michigan's legislative leaders need to create a new Michigan Telecommunications Act that protects consumers and strongly incents competitors to compete vigorously with the dominant companies of our state. The Legislature needs to provide clear policy direction to the Public Service Commission of Michigan that gives the Commission the tools and targeted powers it needs to balance the interests of all competitors for the good of Michigan consumers.

I urge this Committee to step up and provide a crucial quid pro quo for competitors in this bill, which as it now stands, creates tremendous deregulatory benefits for only the dominant incumbents, without corresponding protections or benefits for viable competitors.

I urge you to vote YES to add the CLEC carriers' proposed amendments to the pending bill for the sake of effective competition in Michigan.

Thank you for you time and careful consideration of this very important matter!

Attachment A

_____ offered the following amendments to Senate Bill 754 (S-5):

Amendment 1

On page __, amend the purpose of the bill to include amending Section 352.

Amendment 2

On page __, following line __ amend Section 352 to read as follows:

(1) ~~Until January 1, 1997, the~~ The rates of a provider of basic local exchange service for interconnection under this article shall be at the provider's total service long run incremental cost of providing the service. ~~After January 1, 1997, the rate for interconnection shall be just and reasonable as determined by the commission.~~

(2) The rates for **NETWORK ELEMENTS AND COMBINATIONS OF NETWORK ELEMENTS** unbundled loops, number portability, and the termination of local traffic shall be the rates established **BY THE** ~~under~~ commission. ~~case U-10647 and shall remain in effect until new total service long run incremental cost studies for such services have been approved by the commission.~~

(3) **THE RATE OF A NETWORK ELEMENT MUST MEET BOTH OF THE FOLLOWING TESTS:**

(A) **THE TARIFFED OR CONTRACT RATE A RETAIL CUSTOMER OR AFFILIATE IS OR WOULD BE CHARGED FOR THE ELEMENT, SERVICE, OR ITS FUNCTIONAL EQUIVALENT.**

(B) **WHERE THE SAME NETWORK IS USED TO PROVIDE A RETAIL SERVICE AND A WHOLESALE SERVICE, THE RATE OF THE NETWORK ELEMENT SHALL NOT EXCEED THE RETAIL RATE LESS THE TOTAL SERVICE LONG RUN INCREMENTAL COSTS OF ALL OTHER COMPONENTS THAT TOGETHER FORM THE RELEVANT RETAIL SERVICE.**

(4) IF THE NETWORK ELEMENT IMPUTATION TEST IN SUBSECTION 3 ABOVE IS NOT MET, THE UNBUNDLED NETWORK ELEMENT RATE SHALL BE REDUCED UNTIL THE NETWORK ELEMENT RATE EQUALS THE LESSER OF THE RATE STANDARDS IN SUBSECTION 3 ABOVE.

(5) EXISTING NETWORK ELEMENT RATES MAY BE REVISED OR NEW NETWORK ELEMENT RATES ESTABLISHED BY THE COMMISSION AFTER AN EVIDENTIARY PROCEEDING. TO INITIATE SUCH A PROCEEDING, A PARTY SHALL FILE WITH THE COMMISSION A PETITION TO ESTABLISH OR ALTER NETWORK ELEMENT RATES. THE PETITION MUST CLEARLY STATE THE PROPOSED RATE OR RATES AND BE ACCOMPANIES WITH REASONABLE DOCUMENTARY SUPPORT FOR THE PROPOSED RATE OR RATES. IF THE PETITIONER SEEKS AN INCREASE TO A PREVIOUSLY COMMISSION ORDERED RATE, THE PETITIONER MUST DEMONSTRATE THAT THE PROPOSED REVISION RESULTS FROM AN INCREASE IN UNDERLYING COST AND THE INCREASE IN UNDERLYING COST HAS BEEN REFLECTED IN RETAIL RATES.

_____ offered the following amendments to Senate Bill 754 (S-1):

Amendment 1

On page 1, amend the purpose of the bill to include amending Section 362.

Amendment 2

On page 15, following line 26 amend Section 362 to read:

- (1) The rate of a provider of local exchange service is subject to subsection (2) if all of the following apply:
 - (a) The provider has a service that competes with a service of another provider.
 - (b) The other provider utilizes a service, including any unbundled service element or basic network component, from the provider of local exchange service that is not available within the relevant market or geographic area from any other provider of local exchange service.
 - (c) The provider of local exchange service uses that same noncompetitive service or its functional equivalent.
- (2) The rate of a telecommunication service shall exceed the sum of both of the following:
 - (a) The tariffed rates, including access, carrier common line, residual interconnection, and similar charges, for the noncompetitive service or its functional equivalent that is actually used by the provider of local exchange service, as those rates would be charged a customer for the use of that service.
 - (b) The total service long run incremental costs of all other components of the provider of local exchange service.
- (3) AN INCUMBENT PROVIDER'S COMMISSION-APPROVED COST STUDY OR COST STUDIES USED TO ESTABLISH THE COST OF NETWORK ELEMENTS WHICH IN TURN ARE USED TO ESTABLISH THE RATES TO BE CHARGED FOR NETWORK ELEMENTS TO OTHER PROVIDERS SHALL BE THE SAME COST STUDY OR STUDIES USED TO DETERMINE THE INCUMBENT PROVIDER'S

COMPLIANCE WITH THIS SECTION AND SECTIONS 304A AND 321 OF THIS ACT.

(4) IN ANY ORDER APPROVING A COST STUDY OR STUDIES TO ESTABLISH THE COST OF NETWORK ELEMENTS, THE COMMISSION SHALL ALSO DETERMINE WHETHER AND IN WHAT MANNER THE APPROVED COST STUDY OR STUDIES AFFECT THE INCUMBENT PROVIDER'S COMPLIANCE WITH THIS SECTION AND SECTIONS 304A AND 321 OF THIS ACT.